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NO. 399 P. 4

SEP 06 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Chen et al.

Attorney Docket No.: TRNDP004

Application No.: 09/702,289

Examiner: KHOSHNOODI, Nadia

Filed: October 30, 2000

Group: 2133

Title: **TRACKING AND REPORTING OF
COMPUTER VIRUS INFORMATION**

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office, Attention: Examiner KHOSHNOODI, Nadia at facsimile number 571-273-8300 on September 06, 2005.

Signed: _____

Ryan Eachus

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated below.

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REMARKSStatus of Application

A first Office action by Examiner Todd Jack was mailed February 6, 2004 and rejected all claims 1-22. Evidently the case was reassigned as a final Office action was prepared by Examiner Khoshnoodi and mailed May 4, 2005, again rejecting all claims. Applicant held a telephone interview with the Examiner Khoshnoodi on August 17, 2005 and filed a Reply after Final by facsimile on August 18, 2005.

The First Office Action Is Deficient

The first Office action is deficient in that it did not properly reject claim 1 or did not allege that each limitation of the claim was present in the cited reference. For example, the first Office action alleges that the second element of claim 1 ("at least one antivirus scanning server") is present in *Hailpern et al.* (first Office Action, page 2). But, the final Office action retreats from that position and suddenly claims that this second element is not disclosed in *Hailpern et al.* (final Office action, page 3). The final Office action then introduces a new reference, *Tso*, and a new ground of rejection and alleges that this second element is present in *Tso*. The only conclusion that can be drawn is that claim 1 was not properly rejected in the first Office action.

Further, the first Office action does not allege that the third element of claim 1 ("a scan log of information") is present in either of the cited references. The final Office action agrees with this position and states that this third element is not disclosed in *Hailpern et al.* The final Office action then introduces a new ground of rejection and alleges that this third element is present in *Tso*. The only conclusion that can be drawn is that claim 1 was not properly rejected in the first Office action.

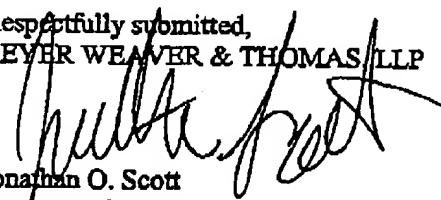
Applicant can also point out further deficiencies in the first Office action regarding the fourth element of claim 1 and the corresponding steps of claim 12.

The Application Is Not Ripe for Appeal Because the Claims Have Not Been Properly Twice Rejected

Applicant has filed this Pre-Appeal Brief Request for Review because the application is not yet ripe for appeal. As explained above, claim 1 (at least) has not been properly twice rejected and therefore the claims are not yet suitable for appeal. Applicant hopes that this pre-

appeal request will obviate the need to file a lengthy appeal brief when the claims are not yet ready for appeal. Therefore, Applicant requests that the finality of the final Office action be withdrawn and that a new non-final Office action be issued.

Respectfully submitted,
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